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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/682,139	10/09/2003	Mark Baker	57690.010153	1357

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Richard D. Harris
GREENBERG TRAURIG, P.C.
Ste. 2500
77 W. Wacker Dr.
Chicago, IL 60601

EXAMINER

VAN, QUANG T

ART UNIT	PAPER NUMBER
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3742

DATE MAILED: 01/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/682,139

Applicant(s)

BAKER, MARK

Examiner

Quang T Van

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Amendment filed on 11/12/04.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-9 is/are allowed.
- 6) ☒ Claim(s) 10-12 is/are rejected.
- 7) ☒ Claim(s) 13 and 14 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by MacLean, IV (US 5,468,939). MacLean discloses a microwave cooking container for popping popcorn comprising a generally rectangular shaped paperboard blank folded along crease lines to form a bottom portion (12), a first side portion (14), a top portion (23), and a second side portion (16) wherein said top portion (23) and said first side portion (14) are adapted to be attached so as to form a cube having opposed, open sides; and a first collapsible side (34) and a second collapsible side (34) each adapted to substantially cover one of said opposed, open sides of said cube when said collapsible microwave cooking container is in an expanded condition; wherein said first (34) and said second collapsible sides (34) are formed by cooperating, bendable segments provided to opposed sides of each of said top portion (23), bottom portion (12), and first (14) and second side (16) portions and wherein said bendable segments provided to said first (14) and second side (16) portions cooperate with said bendable

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segments (34) provided to said bottom portion (12) to contiguously integrate upwardly extending sections of said first (14) and second (16) side portions and said collapsible sides (34) about a perimeter of said bottom portion (12) for reducing leakage from said collapsible microwave cooking container when said collapsible microwave cooking container is in said expanded condition.

3. Claims 10-12 are rejected under 35 U.S.C. 102(e) as being anticipated by Langen (US 2003/0106899). Langen discloses, figure 13, a container for microwave popcorn comprising a generally rectangular shaped paperboard blank folded along crease lines to form a bottom portion (O), a first side portion (P), a top portion (M), and a second side portion (N) wherein said top portion (M) and said first side portion (P) are adapted to be attached so as to form a cube having opposed, open sides; and a first collapsible side (G, I) and a second collapsible side (H, J) each adapted to substantially cover one of said opposed, open sides of said cube when said collapsible microwave cooking container is in an expanded condition; wherein said first (G, I) and said second collapsible sides (H, J) are formed by cooperating, bendable segments provided to opposed sides of each of said top portion (M), bottom portion (O), and first (P) and second side (N) portions and wherein said bendable segments provided to said first (P) and second side (N) portions cooperate with said bendable segments provided to said bottom portion (O) to contiguously integrate upwardly extending sections of said first (P) and second (N) side portions and said collapsible sides (G, I and H, J) about a perimeter of said bottom portion (O) for reducing leakage from said collapsible

microwave cooking container when said collapsible microwave cooking container is in said expanded condition.

4. Claims 1-9 are allowed.

5. Claims 13-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not show or suggest each of said first collapsible side and said second collapsible side comprise a first generally rectangular shaped segment laterally extending from said bottom portion and having a first radius locking tab adjoining said first segment, a second generally rectangular shaped segment laterally extending from said top portion and having a second radius locking tab adjoining said second segment, and a locking tab slot disposed at the intersection of at least one of the first and second radiused locking tabs and the corresponding one of the first and second generally rectangular shaped segment, respectively, as recited in claims 1-6; each of said collapsible side and said second collapsible side comprising an outwardly extendable tab for use in removing said collapsible microwave cooking container from a microwave oven after heating as recited in claims 8-9.

Response to Amendment

7. Applicant's arguments filed 11/12/2004 have been fully considered but they are not persuasive.

Applicant argues "MacLean, IV does not disclose the locking tab and slot structure disclosed in the present Application" recited in page 7 of Amendment and Response to Office Action filed on 11/12/04. MacLean IV discloses all claim limitations as described in claims 10-12. Further, claim 10 does not disclose such locking tab and slot structure as the Applicant tries to argue. Therefore, claims 10-12 are remain rejected under 102 (b) as being anticipated by MacLean, IV (US 5,468,939).

With regard to claims 1-9 and 13-14 rejections under 35 U. S. C. § 102(e) as being anticipated by Langen (US 2003/0106899). The Examiner has properly reviewed the content of Provisional Application No. 60/339,631 and agreed that Langen is not entitled to the earlier filing date of the provisional application for claims 1-9 and 13-14 because the missing features such as "Heat Tabs" for safe removal of the container from the microwave oven; an improved locking mechanism for the collapsible side panels, consisting of radiused locking tabs and slots; and developing webbing and gusseting at the four corners of the bottom panel to make the container leak resistant, which are not disclosed in the parent provisional application. Therefore, claims 1-9 and 13-14 are indicated allow over the art of record. However, claims 10-12 are remain rejected under 35 U.S.C. 102(e) as being anticipated by Langen (US 2003/0106899) because claimed limitations of claims 10-12 are disclosed in Provisional Application No. 60/339,631, which do not include the above discussed limitations.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quang T Van whose telephone number is 571-272-4789. The examiner can normally be reached on 8:00Am 7:00Pm M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robin Evans can be reached on 571-272-4777. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



QV

December 30, 2004



Quang T Van
Primary Examiner
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